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No. _____

In The

Supreme Court of the United States

October Term, 1993

PARESHKUMAR PATEL,

Petitioner,

vs.

THE STATE OF TEXAS,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals For The First Judicial District Of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the State can assert on appeal that a defendant lacks "standing" to challenge the validity of a search and seizure where the State failed to raise the issue in the trial court.

2. Whether a defendant has a reasonable expectation of privacy with regard to his personal property found in a stolen car.

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In The

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PARESHKUMAR PATEL,

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vs.

THE STATE OF TEXAS,

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On Petition For Writ Of Certiorari To The Court Of Appeals For The First Judicial District Of Texas

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the First Judicial District of Texas.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 856 S.W.2d 486 (Appendix A). The Court of Criminal Appeals denied discretionary review without an opinion (Appendix B).

STATEMENT OF JURISDICTION

The opinion and judgment of the Court of Appeals were entered on May 6, 1993. The Court of Criminal Appeals denied discretionary review on September 15, 1993. This court has jurisdiction under 28 U.S.C. § 1257(a) and Supreme Court Rule 10.1.

APPLICABLE CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .

STATEMENT OF THE CASE

On January 20, 1990, Roy McIntyre, a salesman at Mike Calvert Toyota in Houston, Texas, took a customer on a test drive in a 1990 Toyota Camry. When McIntyre did not return to the dealership, the sales manager provided the police with the vehicle identification number and a description of the car.

On February 13, 1990, petitioner went to the police station in South Hackensack, New Jersey, to report that he had been robbed in the parking lot of a motel. He asserted that he had no money, so the police arranged for him to stay at the Airport Motel. The desk clerk told the police officer who accompanied petitioner that petitioner

had previously tried to check into the motel but his credit card had been rejected.

On February 14, 1990, a police officer went to the motel to check on petitioner. After talking to the desk clerk, the officer called in the vehicle identification number of petitioner's 1990 Toyota Camry. He was advised that the car had been reported stolen in Houston and was associated with a missing person. Police officers arrested petitioner and searched the car. They found a pistol in a cassette tape case under the driver's seat, and a receipt showing that petitioner had redeemed the pistol from a pawnshop in Houston on January 19, 1990.

On March 25, 1990, McIntyre's body was found in a field less than one mile from the dealership. He had been shot four times. A firearms examiner determined that the pistol found in the car was the murder weapon.

Petitioner was charged with murder. Prior to trial, he moved to suppress the evidence seized from the car on various grounds. At the suppression hearing, the State did not raise the issue of whether petitioner had "standing" to challenge the search and seizure. The trial court denied the motion to suppress. After the jury convicted petitioner of murder, the court sentenced him to 75 years in prison.

On appeal, petitioner challenged the validity of the search of the stolen car and the seizure of his personal property. The State raised for the first time on appeal whether petitioner had "standing" to challenge the search and seizure (State's Brief at 4-5). Petitioner responded that the State could not raise "standing" for the first time on appeal (Petitioner's Supplemental Brief at 3-5). The

Court of Appeals permitted the State to raise "standing" for the first time on appeal, and held that petitioner "did not have a reasonable expectation of privacy and thus lacked standing to contest the search of the stolen automobile." 856 S.W.2d 488-89. Petitioner unsuccessfully sought to persuade the Texas Court of Criminal Appeals to review the issues related to "standing" (Petition For Discretionary Review at 8-12).

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE WHETHER THE STATE CAN ASSERT ON APPEAL THAT A DEFENDANT LACKS "STANDING" TO CHALLENGE THE VALIDITY OF A SEARCH OR SEIZURE WHERE THE STATE FAILED TO RAISE THE ISSUE IN THE TRIAL COURT.

In *Rakas v. Illinois*, 439 U.S. 128 (1978), police seized weapons and shells from a car in which the defendants had been passengers. The defendants did not assert that they owned the car, the weapons or the shells. The State contended in the trial court that the defendants lacked "standing" to challenge the search and seizure. This court viewed the issue as "whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it", which required the court to determine "whether the search has infringed an interest of the defendant which the Fourth Amendment was designed to protect." 439 U.S. at 140. Because the defendants asserted no interest in the car searched nor the property seized,

and failed to show any legitimate expectation of privacy in the areas of the car searched, they lacked "standing" to challenge the search and seizure.

Subsequent to *Rakas*, this court held that a defendant charged with a possessory crime may claim the benefits of the exclusionary rule only if his own Fourth Amendment rights have been violated. *United States v. Salvucci*, 448 U.S. 83 (1980). A defendant may not challenge the validity of a search or seizure unless he had a legitimate expectation of privacy in the place searched. *Rawlings v. Kentucky*, 448 U.S. 98 (1980).

Rawlings restructured the substantive analysis in search and seizure cases by dispensing with "standing" as a discreet analytic element apart from the merits. *United States v. Bouffard*, 917 F.2d 673 (1st Cir. 1990).[1] After *Rakas*, the inquiry is whether government officials violated any legitimate expectation of privacy held by the defendant. In that regard, the defendant must establish that unlawful police conduct intruded upon some legitimate expectation of privacy on his part. 917 F.2d at 675.

The Court of Appeals relied on *Rakas* for the proposition that the State may raise standing for the first time on appeal. 856 S.W.2d at 489. The court concluded that petitioner did not establish that he had a reasonable expectation of privacy in the contents of the stolen car. However, *Rakas* does not require the defendant to establish his

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[1] To say that a party lacks Fourth Amendment standing is to say that his reasonable expectation of privacy has not been infringed. It is with this understanding that "standing" is used as a shorthand term. *United States v. Taketa*, 923 F.2d 665, 669-70 (9th Cir. 1991).

"standing" in the trial court unless the State puts him on notice to do so. In *Rakas*, the defendants conceded that they did not own the car or the property seized from it, and the State challenged their "standing" in the trial court. This court observed that the "prosecutor's arguments gave petitioners notice that they were to be put to their proof on any issue as to which they had the burden. . . . " *Rakas v. Illinois*, 439 U.S. at 131, n. 1. This "notice" given at the pretrial hearing distinguishes *Rakas* from the instant case. See *Hernandez v. State*, 762 S.W.2d 578, 582 (Tex. Crim. App. 1988) (opinion dissenting to refusal of petitions for discretionary review).

The decision of the Court of Appeals conflicts in principle with *Steagald v. United States*, 451 U.S. 204 (1981), in which this court declined to permit the government to raise "standing" for the first time on certiorari. This court observed that the government "may lose its right" to raise the issue "when it has failed to raise such questions in a timely fashion during the litigation." 451 U.S. at 209.

Many jurisdictions interpret *Steagald* so as to preclude the State from raising "standing" for the first time on appeal. Although the defendant has the burden to establish his "standing" to challenge a Fourth Amendment violation, the prosecution waives the issue by failing to raise it in the trial court unless there is "an impediment which prevented raising the argument below." *United States v. DeWitt*, 946 F.2d 1497, 1499 (10th Cir. 1991), *cert. denied sub. nom. Rison v. United States*, 117 L.Ed.2d 467 (1992). The State has the burden to develop in the trial court those facts necessary to enable the appellate court to resolve the issue. *D'Antorio v. State*, 837

P.2d 727 (Alaska App. 1992). Otherwise, the defendant will not be on "notice that he will be put to his proof" on the issue of standing so as to provide the opportunity to produce evidence to meet the claim. *State v. Marshall,* 791 P.2d 880, 887 (Utah App. 1990); *People v. Barry,* 200 Ill.App.3d 930, 558 N.E.2d 443 (1990). The issue of "standing" is simply not a jurisdictional requirement that the defendant must establish in the first instance. *State v. Houpt,* 302 Ark. 188, 788 S.W.2d 239 (1990). Numerous other jurisdictions refuse to allow the State to raise "standing" for the first time on appeal. *Cook v. State,* 574 So.2d 905 (Ala. Crim. App. 1990); *Everroad v. State,* 590 N.E.2d 567 (Ind. 1992); *State v. Sapiel,* 432 A.2d 1262 (Me. 1981); *Bell v. State,* 96 Md. App. 46, 623 A.2d 690 (1993); *State v. Green,* 103 N.C. App. 38, 404 S.E.2d 363 (1991); *Oody v. State,* 823 S.W.2d 554 (Tenn. Crim. App. 1991); *State v. Goodman,* 42 Wash. App. 331, 711 P.2d 1057 (1985); cf. *State v. Cetnarowski,* 166 Wis.2d 700, 480 N.W.2d 790 (1992).

Several jurisdictions permit the State to raise "standing" for the first time on appeal. In *United States v. Taketa,* 923 F.2d 665 (9th Cir. 1991), the court held that the defendant has the burden to demonstrate that he had a reasonable expectation of privacy even if the government does not raise the issue. In *Wilson v. State,* 692 S.W.2d 661, 669 (Tex. Crim. App. 1984), the court found that *Rakas* put defendants on notice that they must establish a privacy interest in the place searched as an element of their Fourth Amendment claim, further suggesting that this court would no longer require the government to raise

"standing" in the trial court.[2] In *State v. Strayer*, 242 Kan. 618, 750 P.2d 390, 394 (1988), the court permitted the State to raise "standing" for the first time on appeal "provided the prosecution did not raise contrary assertions in the lower court and where all of the facts available in the record are sufficient to show standing or lack thereof."[3] Finally, in *State v. Baltimore*, 242 Neb. 562, 495 N.W.2d 921, 926 (1993), the court permitted the State to raise "standing" for the first time on appeal because "the requirement of standing is fundamental to a court's exercising jurisdiction."[4]

One jurisdiction has taken a "hybrid approach" to this issue. The Fifth Circuit has generally declined to consider "standing" where raised by the government for the first time on appeal. *United States v. Amuny*, 766 F.2d 1113 (5th Cir. 1985). However, that court has permitted the government to raise "standing" for the first time on appeal where "no facts were adduced at the [suppression] hearing from which the government could reasonably have inferred the existence of the defendant's standing." *United States v. Cardona*, 955 F.2d 976, 982 (5th Cir.), cert. denied, 121 L.Ed.2d 291 (1992).

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[2] However, Judge Clinton has subsequently suggested that *Wilson* was incorrectly decided. *Hernandez v. State*, 762 S.W.2d at 582.

[3] *Strayer* relied on *United States v. Hansen*, 652 F.2d 1374 (10th Cir. 1981), which was subsequently distinguished on this point in *United States v. DeWitt, supra.*

[4] This position was rejected by the Arkansas Supreme Court in *State v. Houpt, supra.*

The *Steagald* dictum appears to preclude the State from raising "standing" for the first time on appeal. The state and federal appellate courts disagree as to the proper interpretation of this aspect of *Steagald*. Whether the State may raise "standing" for the first time on appeal is an important question of federal law which should be settled by this court.

At the very least, this court should remand the case to the trial court for an evidentiary hearing to provide petitioner an opportunity to establish his "standing." Although petitioner introduced no evidence on this point at the suppression hearing, two witnesses testified at trial that petitioner told them that he had bought the car. Where a defendant's failure to assert an expectation of privacy can be explained by the State's failure to challenge "standing" at the suppression hearing, this court has remanded to the trial court for further proceedings to allow the defendant to establish a privacy interest. *Combs v. United States*, 408 U.S. 224 (1972). Considerations of fundamental fairness warrant remand in order to allow petitioner an opportunity to attempt to establish the requisite expectation of privacy. *United States v. Bouffard*, 917 F.2d at 677.[5]

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[5] Petitioner suggests a remand only as an alternative should this court reject his contention that the State waived the issue by failing to raise it and develop the record in the trial court.

II. CERTIORARI SHOULD BE GRANTED TO RESOLVE WHETHER A DEFENDANT HAS A REASONABLE EXPECTATION OF PRIVACY WITH REGARD TO HIS PERSONAL PROPERTY FOUND IN A STOLEN CAR.

Police officers searched the stolen car and found a pistol in a cassette tape case under the driver's seat, and a receipt showing that petitioner had redeemed the pistol from a pawnshop on the day before the deceased disappeared. The pistol proved to be the murder weapon. The Court of Appeals held that petitioner did not have a reasonable expectation of privacy and thus lacked "standing" to contest the search of the stolen car. In response to petitioner's contention that even if the police could search the car, they could not open the container in which they found the pistol, the court responded that petitioner did not establish that he had a reasonable expectation of privacy in the contents of the stolen car. 856 S.W.2d at 488-89.

Generally, the allegation of an unreasonable search or seizure, if not disputed by the State, is sufficient to establish the defendant's "standing" to challenge the search or seizure. *Russell v. State*, 717 S.W.2d 7, 9, n. 6 (Tex. Crim. App. 1986). When petitioner filed his motion to suppress, the State was on notice that he was asserting a reasonable expectation of privacy with respect to his personal property found in the car. *Harper v. State*, 704 S.W.2d 546 (Tex. App. - Houston [14th Dist.] 1986, pet. ref'd.).

Assuming arguendo that the State may raise "standing" for the first time on appeal, petitioner demonstrated a reasonable expectation of privacy with respect to the

property discovered during the search. This court's decision in *Rakas v. Illinois*, adopting the "expectation of privacy" test, "does not conflict with the notion that, at least in some circumstances, a person may have standing by virtue of the fact that *his* personal property is in the car." *4 LAFAVE, SEARCH AND SEIZURE* § 11.3(E) (2d ed. 1987). Given the State's position that petitioner owned the pistol, and redeemed it from a pawnshop on the day before the murder, a sufficient expectation of privacy existed to establish petitioner's "standing" to challenge the search and seizure. Cf. *Goodwin v. State*, 799 S.W.2d 719, 725, n. 2 (Tex. Crim. App. 1990), *cert. denied*, 115 L.Ed.2d 1076 (1991).

This court has not expressly decided whether a defendant has a reasonable expectation of privacy with regard to his personal property found in a stolen car. The decision of the Court of Appeals conflicts in principle with *People v. Dalton*, 24 Cal.3d 850, 598 P.2d 467 (1979), *cert. denied*, 445 U.S. 946 (1980). The issue was whether police officers lawfully searched closed boxes in the trunk of a stolen car after the driver was arrested and handcuffed. The State contended that the defendant had no reasonable expectation of privacy in the boxes because they were in a stolen car. The California Supreme Court observed that a warrantless search of closed containers found within a car involves considerations separate from those involved in a warrantless search of the car, and must be justified by some recognized exception to the warrant requirement. The court relied on *United States v. Chadwick*, 433 U.S. 1 (1977) for the proposition that once containers come under the exclusive control of law enforcement officers, a warrantless search is permissible

under the Fourth Amendment only if probable cause and exigent circumstances are present.

The State argued that a defendant who steals a car may not contest the search of the car or the containers found within because he has no privacy interest in a stolen car. The court responded that even if the defendant had no protectable interest in the car, he clearly had a reasonable expectation of privacy in the containers and could contest their search. The court also rejected the State's contention that a defendant who places personal property in a stolen car has waived his right of privacy in their contents. The court relied on *Mincey v. Arizona*, 437 U.S. 385 (1978), in which this court rejected a contention that the defendant forfeited any reasonable expectation of privacy in his apartment by committing a homicide inside.

Petitioner owned the personal property found in the car. His ownership, combined with the fact that the pistol was found in a closed container, demonstrates that he sought to preserve the pistol as private, and that his expectations, viewed objectively, were reasonable under the circumstances. The Court of Appeals decided this important question of federal law in a manner that conflicts with the decision of the California Supreme Court in *Dalton*. Moreover, this issue has not been, but should be, settled by this court.

CONCLUSION

For all of the above reasons, this court should grant certiorari.

Respectfully submitted,

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APPENDIX A

Pareshkumar Manabhai

PATEL, Appellant,

v.

The STATE of Texas, Appellee.

No. 01-91-00744-CR.

Court of Appeals of Texas,
Houston (1st Dist.).

May 6, 1993.

Defendant was convicted in the 230th District Court, Harris County, Joe Kegan, J., of murder. Defendant appealed. The Court of Appeals, O'Connor, J., held that: (1) defendant did not have reasonable expectation of privacy in contents of stolen car, and (2) memorandum from prosecutor's office was not admissible under rule of optional completeness.

Affirmed.

Michael Ramsey, Colin B. Amann, Ramsey & Tyson, Houston, for appellant.

John B. Holmes, Jr., Ernest Davila, Lyn McClellan, Karen Morris, Houston, for appellee.

Before OLIVER-PARROTT, J.C., and O'CONNOR and WILSON, JJ.

OPINION

O'CONNOR, Justice.

Pareshkumar Manabhai Patel, the appellant, was found guilty of murder by a jury and sentenced to 75-years confinement in prison. We affirm.

Fact summary

The appellant did not testify at his trial. The story of the appellant's murder of Ray McIntyre, mostly circumstantial evidence, at trial is as follows: The appellant went to Mike Calvert Toyota pretending to be a customer interested in buying a new car. Ray McIntyre, a salesperson, attended the appellant and got keys to a 1990 Toyota Camry for the appellant to test drive. During the test drive, the appellant forced McIntyre from the car and led him to an empty field. The appellant fatally shot McIntyre, left him in the field, and drove away in the Toyota.

The day after the murder, the appellant drove two of his friends around Houston in the stolen vehicle. He told them he had borrowed the car from a friend. A few days later, the appellant left Houston and drove to College Station where he had an apartment house. There, in the parking lot of the apartment house next door, he stole a license plate that he put on the car. He then drove to Connecticut to visit a friend.

From Connecticut, he drove to South Hackensack, New Jersey, where he evidently ran out of money. In South Hackensack, he walked into a police station and claimed he had been robbed at gunpoint by a black male in the parking lot of the Airport Motel. He said the robber

took his gold chain and wallet, and he had no money to pay for a room. Under the victim assistance program, the police provided him with a room at the motel. While checking the appellant in the hotel, the room clerk told one of the officers the appellant had tried to check in earlier, but his credit card had been rejected. The clerk had confiscated the card and cut it in two.

The next day, the chief of police and one of his officers went to the motel. First, they ran a check on the license plate, which showed the car was stolen.[1] Then they ran a check on the vehicle identification number and learned the car had been reported stolen in Houston and was associated with a missing person. They arrested the appellant for possession of a stolen vehicle, and the police made an inventory of the contents of the Toyota. The pistol used to kill McIntyre was found in the car.

1. Inventory search

The appellant's points of error one through seven, he raises several federal and state constitutional challenges to the search of the stolen Toyota and the court's failure to grant the motion to suppress. These allegations include: no evidence of a standard police department policy regulating the opening of closed containers; no complete listing of the items found in the vehicle; the lack of a police department inventory policy; and the police

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[1] The owner of the car in College Station did not report her license plate had been stolen because she just assumed it had fallen off while she was driving.

officer who prepared the list of items seized was not present during the search.

We must determine whether the appellant has a legal right or interest or "reasonable expectation of privacy" in the area searched or the items seized. *Edlund v. State*, 677 S.W.2d 204, 210 (Tex.App. – Houston [1st Dist.] 1984, no pet.). To determine if the appellant's subjective expectation of privacy is reasonable, we must consider whether it is one society is willing to recognize. *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 2580, 61 L.Ed.2d 220 (1979) (a defendant had no protectible interest in the telephone number he dialed, only in the contents of the conversation); *Jackson v. State*, 745 S.W.2d 4, 8 (Tex.Crim.App.1988) (the defendant had no protectible interest in the contents of a car he stole from the murder victim); *Edlund*, 677 S.W.2d at 210 (the defendant had no protectible interest in the contents of a car he stole from the murder victim). In *Jackson*, the Court of Criminal Appeals wrote:

> Simply put, any actual expectation of privacy the appellant may have manifested in the stolen vehicle is not "one society is willing to recognize as 'reasonable.' " . . . We are convinced that the *stare decisis* of this Court is applicable in the case *sub judice* and appellant lacked standing to contest the search and seizure of the stolen vehicle which he gained possession of only by reason of his criminal conduct.

Jackson, 745 S.W.2d at 8; *see also Edlund*, 677 S.W.2d at 210. We hold the appellant did not have a reasonable expectation of privacy and thus lacked standing to contest the search of the stolen automobile.

The appellant contends even if the police could search the car, they were not free to open the container in which they found the gun. To support his argument, the appellant cites *Colorado v. Bertine*, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987), 1632, 109 L.Ed.2d 1 (1990). This case is distinguishable from both *Wells* and *Bertine*, because the automobile subject to the inventory search in those cases was not stolen. Here, as in *Jackson, Bodde [v. State*, 568 S.W.2d 344 (Tex.Crim.App.1978), and *Edlund*, the automobile was stolen. In both *Wells* and *Bertine*, the person driving the car was arrested for driving while intoxicated, and the search of the car was incidental to the arrest.

The law is clear in New Jersey, as well as in Texas, that stolen property may be seized and impounded for the true owner. *See* N.J.Stat.Ann. § 39:5-47 (West 1990); *New Jersey v. De Marco*, 384 A.2d 1113, 1116 (N.J.Super.Ct.App.Div.1978); *Gandy v. State*, 835 S.W.2d 238, 243 (Tex.App. – Houston [1st Dist.] 1992, pet. ref'd). The police could not just abandon the car in the parking lot of the motel.

The appellant argues the state cannot raise the issue of his standing on appeal, because it did not raise it at trial. First, the State received a favorable ruling from the trial court before it had the opportunity to present a reason to overrule the motion to suppress. After the evidence was introduced and after the appellant argued reasons to suppress the items seized during the search, the trial court overruled the motion and specifically said she did not want to hear from the State. Thus, the State was not required to give reasons to support the trial court's favorable ruling.

Second, the State may raise standing on appeal even when it did not raise it at the trial. It can, however, more easily be resolved under the substantive fourth amendment doctrine. In *Rakas v. Illinois*, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978), the United States Supreme Court was confronted with a standing problem, and they wrote:

> But we think the better analysis forth-rightly focuses on the extent of a particular defendant's rights under the fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing. . . . Analyzed in these terms, the question is whether the challenged search or seizure violated the fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the fourth Amendment was designed to protect. . . . But by frankly recognizing that this aspect of the analysis belongs more properly under the heading of substantive fourth Amendment doctrine than under the heading of standing, we think the decision of this issue will rest on sounder logical reasoning.

Id. 439 U.S. at 139-40, 99 S.Ct. at 428-29. In *Wilson v. State*, 692 S.W.2d 661 (Tex.Crim.App.1985) (Op. on reh'g), the court held the existence of a legitimate privacy interest is an element of the defendant's fourth amendment claim, which he has the burden of proving. *Id.* at 669. Here, the appellant stole the car, and he did not meet his burden of proving he had a reasonable expectation of privacy in the contents of the stolen car. We need not specifically

address the "theoretical" concept of standing, because he did not prove his more "locigal" fourth amendment protections had been infringed upon.

We overrule points of error one through seven.

2. Rule of optional completeness

In point of error eight, the appellant argues the trial court erred when it refused to admit part of a document offered under the rule of optional completeness.

The rule of optional completeness – which permits a party to introduce the entire writing after the other party has introduced only part of it – is meant to guard against the confusion, distortion, or false impression that can arise from the introduction of part of a writing out of context. *Livingston v. State*, 739 S.W.2d 311, 331 (Tex.Crim.App.1987); TEX.R.CRIM.EVID. 107.[2] The purpose of the rule is to "reduce the possibility of the fact finder receiving a false impression from hearing the evidence of only part of an act." *Kinnamon v. State*, 791 S.W.2d 84, 101 (Tex.Crim.App.1990).

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[2] The rule of optional completeness states: "When a part of an act, declaration, conversation, writing or recorded statement is given in evidence by one party, the whole on the same subject may be inquired into by the other, as when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation, writing or recorded statement is given in evidence, any other act, declaration, writing or recorded statement which is necessary to make it fully understood or to explain the same may also be given in evidence. 'Writing or recorded statements' includes depositions." TEX.R.CRIM.EVID. 107.

In *Grunsfeld v. State*, 813 S.W.2d 158, 163 (Tex.App. – Dallas 1991), *aff'd*, 843 S.W.2d 521 (Tex.Crim.App.1992), the court held the trial court erred when it admitted the police report in evidence after the police officer consulted it for an address; the court, however, found the error was harmless. Here, the writing was a memorandum from the Bergen County prosecutor's office. The parties were trying to determine why the appellant's credit card was rejected at the Airport Motel in New Jersey, which led to the appellant's asking for assistance from the police.

The officer on the stand thought the card was confiscated because it had expired. Upon viewing the actual card, he realized it had not expired. At the appellant's request, the officer was called back to the stand to clear up the confusion. He was handed the memorandum and asked to read the first paragraph of page four to himself. After reviewing the document, the officer conceded the credit card was refused because the card was in the appellant's father's name.

The State called another officer to testify. Again, the officer was referred to a particular paragraph in the document and asked to read it to himself. The testimony went as follows:

> A. Read it to myself?
>
> Q. To yourself. And that paragraph refers, does it not, to Mr. Patel giving a clerk a credit card and being denied the use of that credit card.
>
> A. That's correct.
>
> Q. Because, well, for the reason stated, and is that, in that report is that what Mr. Patel had

told the investigators as opposed to what some other clerk may have told the investigators. Bottom of page three if you could just read that to yourself. Is this referring to what Mr. Patel told the investigators?

A. That's correct.

Q. And not what some credit card company told the investigators?

A. I'm sorry. I couldn't hear you.

Q. Does this refer to what Mr. Patel told the investigator as opposed to what some credit card operator told the investigators?

A. Its (sic) what Mr. Patel told the investigators.

Upon cross-examination of this witness, the appellant wanted to question the officer about another part of the memorandum pertaining to the appellant's testimony that he had purchased the Toyota for $6,000 from a man named Mike or Miguel. The court did not allow the appellant to pursue this line of questioning, and the appellant asserts, under the rule of optional completeness, the testimony should have been allowed.

The appellant wanted the document introduced to explain how he obtained the vehicle, but the earlier references to the memorandum were used to establish why his credit card was rejected. The two statements are not "on the same subject" as required for the rule of optional completeness. *Grunsfeld*, 813 S.W.2d at 163. In *Wintters v. State*, 616 S.W.2d 197, 202 (Tex.Crim.App. [Panel Op.]

1981), the court, when questioning the validity of entering an entire police offense report, decided it was "permissible for the State to offer into evidence those portions of the report on the same subject."

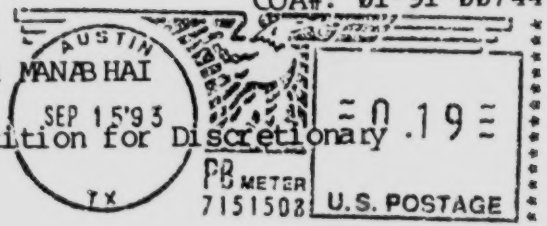
The testimony the appellant wanted introduced was not necessary to explain or make the other evidence elicited from the report fully understood.

We overrule point of error eight and affirm the judgment.

OFFICIAL NOTICE
COURT OF CRIMINAL APPEALS

September 15, 1993
COA#: 01-91-00744-CR

RE: Case No. 0686-93
STYLE: PATEL, PARESHKUMAR MANABHAI



On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Thomas Lowe, Clerk

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APPENDIX B